



State of Utah

OFFICE OF THE ATTORNEY GENERAL



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It is important to note that the HIPAA rule only applies to three types of entities – health plans, health care providers and health care clearinghouses. HIPAA will not affect how a statute applies to entities other than the three covered entities. Therefore, the conclusions of this analysis only apply to the interaction of the state statute or rule and the HIPAA rule with respect to covered entities.

Statute	HIPAA Cite [i]	Summary [ii]	Preemption Analysis
UCA 26-1-17.5(1) Release of confidential records governed by this title.	164.502 Uses and Disclosures	Consistent	Analysis of this section is dependent on review of other section of this title. As is discussed in later sections of this analysis, it appears that UDOH covered entities can comply with both HIPAA and Title 26.
UCA 26-1-17.5(2) Sharing immunization records with schools	164.512(b)(i) Public Health Exception	Consistent	HIPAA permits disclosure of PHI/IIHI by a covered entity for public health activities. Most sharing of immunization records will not be covered by HIPAA as this function in UDOH is performed by a non-covered entity.
UCA 26-1-30 Powers and duties of department	164.512(a) and (b)	Consistent	Conduct of public health activities is supported by the HIPAA privacy rule.
UCA 26-2-3 to –28, except for –23 below Vital Records	164.512(a) and (b); 160.203(c)	Consistent	Collection of vital records is a core public health function required by law and consistent with HIPAA's requirements.
UCA 26-2-23 Records required to be kept by health care institutions – Information filed with local registrar and department	160.203(c), 164.512(a)	Consistent	Hospitals are clearly covered entities under HIPAA. This statute requires hospitals to collect and report vital records. HIPAA authorizes release of PHI without patient consent for this type of public health activity. Covered entities can comply with this state law and HIPAA.

UCA 26-3-2 Voluntary collection of health data	164.512(b)	Consistent	Section 512(b) of HIPAA authorizes covered entities to release data to public health authorities where the authority is authorized to receive the data. This voluntary reporting section authorizes the Department to receive a data report. It will protect covered entities that choose to voluntarily report.
UCA 26-3-4 Quality and publication of statistics as practicable	160.203	Consistent	But for the qualification in this statute that publishing statistics only occur when it is practicable, HIPAA requirements may have been in conflict. If a UDOH covered entity determines that a statistical report has identifiable data, then the report would not be practicable.
UCA 26-3-6 Department may participate with other agencies to develop uniform standards for management of health information.	164.502	Consistent	One of the primary goals of HIPAA was the standardization of health transactions between covered entities.
UCA 26-3-7(1) Disclosure of health data – Consent required	164.502, 164.508, 164.502(g)	Consistent in part	<p>All of the 26-3-7 areas start with the premise that the Department may not release identifiable data unless allowed by one of the exceptions in this section. HIPAA requires that either the subject of the PHI or an appropriate representative consent to disclosure before releasing data, except for the 512 exceptions, such as public health. To the extent that these sections can be interpreted as consistent with HIPAA requirements, they will not be preempted.</p> <p>(a) the individual – this is consistent with HIPAA and will permit using a HIPAA compliant consent form.</p> <p>(b) the next-of-kin if the individual is deceased – HIPAA defers to state law on who is authorized to act on behalf of a deceased person. Under most circumstances next-of-kin are not authorized, absent court appointment to act on behalf of a deceased person. This section is not consistent with HIPAA and should not be followed by UDOH covered entities.</p> <p>(c) the parent or legal guardian if the individual is a minor or mentally incompetent – HIPAA defers to state law in this circumstance also. Unlike this statute, HIPAA distinguishes between emancipated and un-emancipated minors and makes it clear that a parent cannot authorize disclosure of a minor child's records if the child is authorized to make a treatment decision without the parents</p>

			<p>consent. In this latter circumstance, this section is not consistent with HIPAA and should not be followed by UDOH covered entities.</p> <p>(d) a person holding a power of attorney covering such matters on behalf of the individual – So long as the “covering such matters” language in this statute is interpreted to mean that the person has been granted authority to make health care decisions, then this section is consistent with HIPAA.</p>
<p>UCA 26-3-7(2)</p> <p>Disclosure to another Government Entity.</p>	164.512	Consistent in part	<p>This section is very much like a business associate agreement under HIPAA. The data must be used for the purpose for which it was collected. The government entity must agree not to further release the data and to safeguard the data. If the disclosure furthers a treatment, payment or operations activity of a covered entity, then the release would be allowed as a business associate relationship between the covered entity and the other government entity. If not, and the release is not permitted by one of the 512 exceptions, then for that circumstance this section would be inconsistent with HIPAA and should not be followed by a UDOH covered entity.</p>
<p>UCA 26-3-7(3)</p> <p>Disclosure for Research or Statistical Purposes</p>	164.512(i)	Consistent	<p>So long as UDOH rules continue to require an Institutional Review Board approval prior to allowing release of identifiable data for research, this section is consistent with HIPAA.</p>
<p>UCA 26-3-7(4)</p> <p>Disclosure for Audit, Evaluation or Investigation of the Department</p>	164.506(a), 164.512(a), (d)	Consistent in part	<p>Any release pursuant to this section that falls within the scope of treatment, payment or operations of the covered entity, may be accomplished pursuant to a business associate agreement and stay in compliance with HIPAA. Disclosures that are for health oversight activities authorized by law are also permitted by HIPAA. Other releases in this area would not be consistent with HIPAA and should not be permitted by UDOH covered entities.</p>
<p>UCA 26-3-7(5)</p> <p>Disclosure for Disease Surveillance</p>	164.512(a), (b)	Consistent	<p>The releases discussed in this area are all within existing state law for disease surveillance or other authorized public health activities.</p>

UCA 26-3-7(6) Disclosure to Health Care Provider to Protect Patient or Others Closely Associated with the Patient	164.506(a)	Consistent in part	UDOH covered entities may disclose PHI about a patient for the patient's own treatment under HIPAA. The language of this section authorizes a release, so the public health exception would validate any release within the scope of that exception. To the extent that any other contemplated release to protect others was required by law, HIPAA would also be consistent. Other releases would be inconsistent and should not be allowed by UDOH covered entities.
UCA 26-3-7(7) Disclosures for Payment	164.506(a)	Consistent	HIPAA allows releases for payment activities of covered entities.
UCA 26-3-7(8) Disclosure to the Subject of the Identifiable Health Data	164.502	Consistent	People generally have the right to access their own health data upon appropriate verification of identity under HIPAA.
UCA 26-3-8 Discretion of department to make disclosures under 26-3-7	164.502	Consistent in part	UDOH covered entities retain discretion on whether to permit a release of data in many circumstances. However, in the case of the right of the individual to access health data, UDOH covered entities would not have discretion and in this case this statute is inconsistent with HIPAA.
UCA 26-3-10 Department measures to protect security of health data	164.530(c)	Consistent	The requirements of this section to safeguard identifiable health data mirror HIPAA requirements.
UCA 26-4-11, -14, -17, -23, -26, -27: Medical Examiner Receipt and Release of Records	160.203(c), 164.512(a),(g),	Consistent	The Medical Examiner is not a covered entity. Release and retention of records by the Medical Examiner is therefore not covered by HIPAA. The sections dealing with mandatory reporting to the Medical Examiner by covered entities is permissible under the 512 exceptions.
UCA 26-6-6: Communicable Disease Reporting	164.5129(A)	Consistent	Mandatory state reporting requirements, including communicable diseases, is permitted under HIPAA.
UCA 26-6-27(1) Information received by the Department regarding communicable or reportable disease confidential	160.203(c), 164.512	Consistent	Communicable disease information is received and managed by entities within the UDOH that are not covered by HIPAA. If any local health department entity receiving data is part of a covered entity, the provisions in this section are not contrary to HIPAA and provide in some instances more protection of this data.

UCA 26-6-27(2) Release of Communicable Disease Information	160.203(c), 164.512	Consistent	Unlike UCA 26-3-7 which covers all data voluntarily supplied to the Department, this section is limited to communicable or reportable disease information. Most entities in state and local government dealing with this information will not be covered entities. However, even if they were covered entities, the broad public health and abuse reporting exceptions in HIPAA would permit this sharing of data.
UCA 26-6-29: Violation for release of communicable or reportable disease information	160.203(c)	Consistent	HIPAA permits state laws that are more protective to remain enforceable. Any covered entity can comply with both this section and HIPAA.
UCA 26-6-30 Exclusions from confidential requirements	164.512	Consistent	This section merely says that the provisions of this chapter do not apply in certain circumstances. For covered entities, HIPAA would still apply in all circumstances, so there is no problem complying with this section.
UCA 26-6a-5 Reporting of possible communicable disease exposures to EMS personnel, reporting test results to patients	164.512(a), (b) (iv)	Consistent in part	This mandatory public health reporting in this section is permissible under HIPAA. 26-6a-5(1)(d) mandates that a facility receiving a patient tested for AIDS or HIV infection withhold that information from a patient and allow Department personnel to provide those test results. The situations where HIPAA permits withholding information from a patient are quite limited and would not permit this blanket withholding of information. For covered entities, this section is preempted.
UCA 26-6a-7 Penalty for violation of confidential requirements`	160.203	Consistent	States are free to be more protective of data.
UCA 26-6a-8 Patient notification and counseling	160.203	Consistent	Mandated counseling in this section does not violate any HIPAA provision.
UCA 26-6b-5 and -6 Quarantine, isolation and voluntary treatment	164.512	Consistent	Covered entities may comply with releasing information necessary to support public health interventions in this area due to the section 512 HIPAA exceptions.
UCA 26-8a-203 Emergency Medical Services Data collection	164.512	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA.

UCA 26-8a-253 Statewide trauma registry and quality assurance program	164.512	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA.
UCA 26-18-103 Drug Utilization Review Board – Responsibilities	164.506(a); 164.512(d)	Consistent	The activities of the Drug Utilization Review Board are permitted as either a health oversight activity or as part of the treatment, payment or operations of government funded medical programs. Access to PHI by the board to conduct activities required by Utah law is permitted by HIPAA.
UCA 26-18-104 Confidentiality of records held by the DUR	164.508	Consistent	The confidentiality requirements of this section are in harmony with HIPAA requirements.
UCA 26-19-18 Release of medical billing information regarding Medicaid recipient's restricted	164.502	Inconsistent	This section seeks to restrict patient access to their own medical records to support third party liability collections undertaken on behalf of government funded medical programs. HIPAA does not permit this restriction and covered entities in Utah should not follow this section.
UCA 26-21-9 Application for license – Information required – Public records	160.202 (definition of “contrary”), 160.203, 164.512(a)	Consistent	Licensing activities in the UDOH are not conducted by covered entities. The reporting required by this section is permitted by HIPAA under the 512(a) exception.
UCA 26-21-20 Mandate for Hospitals to Provide Itemized List of Charges	164.502	Consistent in part	Two areas of this law are not consistent with HIPAA. The overall requirement to provide an itemized list of charges at the hospital's expense is permissible, except in the case of an “agent”. This term is not defined and could be inconsistent with HIPAA's requirement of limiting access to the patient or someone authorized to make health care decisions on behalf of the patient. Section (5), like 26-19-18 limits access by Medicaid recipients to their own medical records. This restriction is inconsistent with HIPAA and should not be followed by covered entities.
UCA 26-23a-2 Injury reporting requirements	164.512(a)	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA.
UCA 26-23b-103 Detection of Public Health Emergencies - Mandatory reporting requirements	164.512(a)	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA.

UCA 26-23b-104 Public Health Emergencies: Authorization to report	160.203(c), 164.512(b)	Consistent	This section authorizes reporting of medical observations by certain providers that suspect an epidemic disease or bio-terrorism event may be involved. The public health exception in 164.512(b) expressly recognizes authorized, but not required, reporting as valid under HIPAA. This section becomes mandatory in the event a public health emergency is declared.
UCA 26-23b-108 Investigation of suspected bioterrorism and communicable diseases-requirement to destroy records	160.203(c), 164.512(a), 164.512(j)	Consistent in part	For all UDOH activities this section is valid, since none of the entities involved in this activity are covered by HIPAA. If a local health department engaged in this activity is part of a covered entity, then the covered entity may need to retain the records consistent with the entities policy for retention of records regarding treatment of a patient.
UCA 26-25-1 to -5 Health Oversight Reporting	160.203(c), 164.512(d)	Consistent in part	Health oversight activities authorized by law may receive data from covered entities without the patient's permission under 164.512(d). Subsection (3) makes it clear that the purpose of the releases authorized by this state law is improvement of health care. Most entities receiving data under this would not be covered entities. If a covered entity receives data under this section, access to identifiable data would be governed by HIPAA requirements and the provisions of this section that would deny access under circumstances where HIPAA permits access would be preempted
UCA 26-33a-104, -106, -108, -109, -111 Health Data Committee - purpose, powers and duties of the committee	164.512(a)	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA.
UCA 26-45-103, -104 Genetic Privacy Act -Restrictions on employers and insurers	160.203	Consistent	State laws that afford additional protection to a patient's expectation of health information privacy are permitted under HIPAA so long as a patient's access is not unduly restricted. This law provides greater protection for a patient's PHI, in that it prohibits disclosures of the genetic test results to employers or health plans (except in very restricted circumstances), as well as imposes minimum necessary restrictions on PHI release to health plans for payment purposes. This law does not allow the CE to honor an authorization signed by the patient to release genetic tests results to the employer or health plan. This does not cause a preemption issue because the privacy regulations do not compel the

			CE to honor an authorization by the patient.
UCA 26A-1-114: Powers and duties of local health departments	164.512	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA. In addition public health activities are seen as a national priority and HIPAA is intended to not interfere with traditional public health activities.
UCA 31A-31-101 to -108 Insurance Fraud Act - Reports to Government Agencies and Insurers	164.512(d), 164.506(c)	Consistent	This act authorizes health care providers to share information about insurance fraud with various government agencies, including the Department of Insurance and the Attorney General's Office. The Health Oversight reporting provisions of HIPAA at 164.512(d) permit this. Reports to insurers are also permitted by HIPAA as operations when both parties have a relationship with the patient.
UCA 58-13-5(3)(h) Mandatory Report to Division of Occupational and Professional Licensing of health care provider abusing alcohol or drugs	165.512	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA. Covered entities should be aware that HIPAA does not preempt the stricter standards imposed by 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records) for any provider participating in a treatment program covered by that section. Analysis of whether 42 CFR Part 2 preempts this section of state law is beyond the scope of this analysis.
UCA 62A-4a-801 to -802 Safe Relinquishment of a Newborn Child	164.504, 164.512	Consistent	Hospitals are authorized to receive a newborn child from a parent or the parent's designee. Hospitals are required to render appropriate care and transfer the child to the Division of Child and Family Services. Hospitals will receive medical information either from the parent or in the course of treating the child. If the hospital gathers information that suggests abuse or neglect, law requires reporting this information to DCFS. The same applies to reports to Vital Records.

UCA 62A-7-121 Youth offender records are the property of the Division of Youth Corrections and shall be returned to it when the youth offender is terminated from the program.	164.512, 164.524	Consistent in part	This law will require covered entities under contract with the Division of Youth Corrections to release all records to the Division as required by law. This statute, if applied by the DYC to require covered entities to turn over original treatment records and not to retain any copies, would deny patient access to records as required by 164.524. It would also inhibit the ability of a covered entity to assist in the treatment of a patients who either returns for additional treatment or seeks to have records sent to a new provider that needs information about past treatment activity. It would further leave the covered entity unable to defend itself against claims of malpractice. In this situation. HIPAA would preempt this section of state law.
UCA 63-2-107 Governmental Records Act does not apply to government entities covered by HIPAA.	Parts 160 and 164	Consistent	The workgroup identified GRAMA as having preemption problems in the fall of 2002. This section of law was adopted during the 2003 Legislative session. Government covered entities follow HIPAA.
UCA 63-25a-416 to -418 Crime Victim's Reparation- Applicant waiver of privilege and requirement to supply medical or psychological reports	164.524	Beyond Scope	The Crime Victims' Reparations Board is not a covered entity under HIPAA. If an applicant fails to submit to tests or to supply necessary information, the only remedy is to deny the claim. This section implicates no covered entity's duties under HIPAA.
UCA 64-13-27(1) Department of Corrections centralized record of offenders	160.103	Beyond Scope	This centralized record will contain health records about individuals. The Department of Corrections is not a covered entity, thus this section is beyond the scope of HIPAA.
UCA 64-13-27(2) Department of Corrections Records are the property of the Department.	164.512, 164.524	Consistent in part	This law will require covered entities under contract with the Department of Corrections to release all records to the Department as required by law. This statute, if applied by the DOC to require covered entities to turn over original treatment records and not to retain any copies, would deny patient access to records as required by 164.524. It would also inhibit the ability of a covered entity to assist in the treatment of a patients who either returns for additional treatment or seeks to have records sent to a new provider that needs information about past treatment activity. It would further leave the covered entity unable to defend itself against claims of malpractice. In this situation. HIPAA would preempt this section of state law.

UCA 64-13-36 Department of Corrections Testing of prisoners for AIDS and HIV Infection	160.103	Beyond Scope	This centralized record will contain health records about individuals. The Department of Corrections is not a covered entity, thus this section is beyond the scope of HIPAA.
UCA 67-4a-301 Report of Abandoned Property to Deputy State Treasurer	164.512(a)	Consistent	Covered entities may hold abandoned property subject to this act and be required to report PHI in response to the requirements of this law. State laws that mandate reporting by covered entities are permitted by HIPAA.
UCA 67-4a-701 Treasurer May Examine Records to Verify Compliance	164.512	Consistent	HIPAA also permits the examination of records pursuant to section 512(a) to the extent required by law.
UCA 76-5-504 Notification of HIV and AIDS status of offender to victim	164.512	Consistent	State laws that mandate reporting by covered entities are permitted by HIPAA. To the extent that local health departments conduct this activity through a covered entity, release of information to a victim would be permitted without the patient's consent.
UCA 78-25-25 Patient Access to Medical Records	164.524	Consistent	The workgroup identified this section as having preemption problems in the fall of 2002. The old section of this law was repealed and the current language substituted during the 2003 Legislative session. All health care providers, regardless of whether they are covered by HIPAA must grant access to patients and their personal representatives, absent a judicial or other restriction authorized by law. Providers may charge a reasonable copying fee.
Rules	HIPAA Cite i	Summary ii	Preemption Analysis
R612-2-3 Worker's Compensation Rules- Health Care Providers- filing initial examination of industrial patient's injury, follow up disclosures of SOAP or progress notes, return to work forms	164.512(6)(l)	Consistent	Privacy regulation allows for disclosures for workers' compensation or other similar programs, established by law

R612-2-22	160.203	Beyond Scope	The Industrial Commission is not a covered entity, thus this section is beyond the scope of HIPAA. Amendments adopted in July 2003, grant very broad access pursuant to this rule. The agency and the Administrative Rules Review Committee are examining changes to this section. Some have suggested that the fee schedule set by this rule could be a benchmark for covered entities on what is a reasonable charge. The Workgroup took no position on this suggestion.
Access to medical records, charging for copies and obtaining copies of medical records in industrial cases			

[\[i\]](#) All references are found in 45 CFR. For example a listing of 160.203 refers to 45 CFR 160.203.

[\[ii\]](#) **Consistent** indicates that the state statute does not appear to directly conflict with HIPAA.

Inconsistent indicates that the state statute and the HIPAA rule appear to be in direct conflict.

Consistent in part indicates that the state statute and the HIPAA rule appear to be consistent in part and inconsistent in part.

Further analysis required indicates that a conclusion as to whether the state statute and HIPAA are consistent could not be reached and that further information and/or analysis is required.

Beyond scope indicates that the state statute does not appear to intersect with HIPAA. For example, the statute may relate only to a non-covered entity (e.g., Department of Insurance).